

# The Solicitors' Journal

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## CURRENT TOPICS

### The County Courts Act, 1846

AN important centenary passed on 28th August, 1946, without much comment from the Press. Exactly a century before that date the first County Courts Act was passed, establishing over the whole country a system of local courts where, it was hoped, persons of modest means would be enabled to secure speedy justice at a reasonable cost. Before that date it was not uncommon for as many as one-third of the causes entered annually in the King's Court at Westminster to be for amounts not exceeding £20. To try these cases, it was stated at the time, would require an expenditure of at least four times the aggregate amount in dispute. The struggle to establish the system of county courts began in 1830, when LORD BROUGHAM, the newly-appointed Lord Chancellor, introduced a Bill to establish district courts, which was described by Lord Eldon, when it was re-introduced in 1832, as the most objectionable he had ever seen. When one recalls that Lord Eldon was then eighty-one years old, having been Lord Chancellor for twenty-six years until 1827 with a break of little over one year (1806-07), at a time when equity had fallen into disrepute on account of its excessive delays and costs, it is not surprising that his views were proved to be unfounded. So successful were the new courts that the limit of jurisdiction was raised in 1850 from £20 to £50, in 1903 to £100, and in 1934 to £200. Meanwhile, company winding up, bankruptcy and admiralty work were added to the jurisdiction of some county courts, and workmen's compensation, agricultural holdings, married women's property and other jurisdiction were added to the work of all county courts. The centenary of the great Act of 1846 is, however, far from being an occasion for complacency. Apart from such controversial questions as whether county court judges should have divorce jurisdiction added to their many labours, it is beyond dispute that costs at their present level in the county court are prohibitive to the person of small means and tend to defeat the original aim of this legislation. The carrying out of a scheme on the lines of the Rushcliffe proposals may do much to ease this difficulty. The County Court Rules, though simplified in 1937, are still bulky and the recent issue by H.M. Stationery Office of a simple guide does not go far enough to meet the problem. What is needed, as Mr. Claud Mullins recently stated in *The Times*, is to achieve a reformed and simplified procedure. The centenary of the Act of 1846 provides a suitable occasion for the consideration of this matter.

### Solicitors' Accounts

THERE will be no necessity to deliver an accountant's certificate pursuant to s. 1 of the Solicitors Act, 1941, before 16th November, 1946, the date when it is hoped that the

Accountants' Certificate Rules, which are soon to be made, will come into force. This is the conclusion announced in a statement on the subject in the August issue of the *Law Society's Gazette*. The reason given is that the delivery of an accountant's certificate will be a matter unconnected with the issue of a practising certificate. The Lord Chancellor, it is stated, has made an order under s. 30 (2) of the Act, appointing 10th August, 1946, as the date on which s. 1 of the Act (relating to the delivery of an accountant's certificate to the Registrar of Solicitors) shall come into operation. As a result of the order, the Council of The Law Society now have power to make the Accountants' Certificate Rules under s. 1. It is hoped, the *Gazette* states, to make them in September and to bring them into force on 16th November, 1946. All members of The Law Society are to receive, without application and free of charge, a booklet entitled "Solicitors' Accounts," as soon as the rules are made. Non-members will have to pay 2s. for the booklet, which will deal with all the legislation affecting solicitors' accounts, and will be fully annotated.

### Legal Reform

THE people of this country have now got their national health scheme. They still await the promised scheme of legal aid in implementation of the recommendations of the Rushcliffe Committee's report, although that in itself will not bring perfection to our legal machinery. Mr. D. R. REES WILLIAMS, M.P., himself a solicitor, writing in the *Tribune* of 19th July, criticised the scheme on the ground that though it leaves some part of the burden with the litigant and throws the rest on the State, it does not in any way cheapen litigation, and it may even result in making it more expensive. Mr. Rees Williams was of the opinion that there should be fusion of the two branches of the legal profession in order to reduce the number of persons engaged in litigation and thereby cheapen costs. Not everyone will agree that fusion would result in a lesser number of persons being engaged in a case. Most people will agree, however, that court fees should be reduced and civil suitors should not be called upon, as they are, to bear a large proportion of the cost of judicial administration. There is also a good case for extension of the jurisdiction of the county courts, which Mr. Rees Williams recommended. This, indeed, may be as great an answer as we dare to expect to his suggestion that justice should be decentralised, so that, to quote Napoleon's maxim, it should go to the people and the people should not be compelled to go to it. The Rushcliffe Committee's report is certainly not the be all and end all of legal reform, and Mr. Rees Williams' lively and provocative criticisms will keep people awake to the necessity of perfecting the machinery of justice.

### Legal Tuition by Correspondence: Services Scheme

AMONG the interesting facts recorded in the August issue of the *Law Society's Gazette* concerning the six year old War Office scheme of correspondence courses in legal subjects for members of the services, is that over 6,000 students have registered for the courses since they started, including ninety-four members of the Allied Forces who were also eligible for the scheme. German members of the Pioneer Corps, including a German judge, were also among the students. There was also a small number of women students, some articulated clerks, some reading for the Bar, and a few who, before the war, had been shorthand typists in solicitors' offices. One student, typical of many from all corners of the globe, wrote his grateful thanks to The Law Society on the occasion of his passing the solicitors' final examination with distinction, "as a large amount of the success was due to the excellent courses I took and the fine tutoring I received under the educational scheme." The *Gazette* states that it has not yet been discussed whether the scheme will be a permanent feature of service life while conscription lasts. Ten new students are enrolled each week and almost all of them, it is stated, are men and women who wish to make the law their ultimate career. As the *Gazette* sees it, those who enrol now form "the hard core of the legal profession of the future." The gratitude of students provides a cogent argument for the retention of the scheme.

### Agricultural Committees and Tribunals

THE War Agriculture Executive Committees are to be reformed, and the county committees retained, under new legislation which is being drawn up. This will enable much of the admirable technical and advisory work done by the committees in the last few years to continue. Most important of all their functions are those of seeing that a satisfactory standard of husbandry and estate management is maintained, reporting cases of bad farming to the Minister, and, where necessary, recommending dispossession. In exercising these functions the committees no doubt use their powers cautiously and with discrimination, and their highly representative character affords some assurance that their decisions will not be unjust. But all lawyers appreciate that that is not sufficient assurance in itself. It is more reassuring to know that there are eight regional appeal tribunals with jurisdiction to hear appeals from the committees' recommendations for terminating tenancies or taking possession of farm land. Each is appointed by the Minister and consists of a chairman with legal qualifications, one member nominated by the National Farmers' Union, and one member drawn from a list of names submitted by the Central Landowners' Association, the Land Agents' Society, and the Surveyors' Institution. The tribunal makes its report to the Minister, with whom the final decision rests. So far nine cases have been heard by these regional tribunals, in eight of which the committee's recommendation was confirmed; in one case the tribunal felt that, while the farmer had not done all that he might have done, his failing did not warrant dispossession. In all these cases the Minister acted on the tribunal's recommendation.

### The Evacuation Period

A LETTER from the Lord Chancellor's office dated 23rd May to liabilities adjustment officers stresses that the evacuation period under the Defence (Evacuated Areas) Regulations does not end when a person returns and reoccupies premises in an evacuation area, but that the moratorium provided in those regulations continues to apply until the day to be appointed by an Order in Council for its termination. Until that date, the letter states, the moratorium continues to apply, notwithstanding the reoccupation of the premises, to liabilities accruing due in respect of those premises after the date of the reoccupation, as well as to those which accrued due prior to that date. The liabilities, therefore, including rates, which accrue due after the date of the reoccupation and up to the appointed day, continue to be moratorium liabilities

to which the Defence (Evacuated Areas) Regulations still apply, and the only proceedings which can be taken by a creditor in respect of such liabilities are under s. 2 of the Liabilities (War-Time Adjustment) Act, 1944, the previous remedy of the moratorium creditor under para. 4 (4) of the Defence (Evacuated Areas) Regulations having been revoked as from the 1st January, 1946, by Order in Council of the 16th November, 1945 (S.R. & O., 1945, No. 1453). The letter notes, however, that where terms of settlement or a moratorium order have provided for the payment of liabilities accruing after the date of the reoccupation of premises and for so long as the evacuation period continues, by virtue of s. 2 (2) of the Liabilities (War-Time Adjustment) Act, 1944, the evacuation period is deemed to have ended so far as those liabilities are concerned, and accordingly the creditor is at liberty to enforce the terms of the settlement or moratorium order, as the case may be.

### Local Records

IN the past solicitors have played a great part in preserving for the nation valuable historical records. During the war particularly they have made great contributions to this cause, and they can still continue to do so. An outstanding example of what can be done by a firm with a lengthy tradition of service is provided by the work of Messrs. Webber and Williams, of Amptill, Bedfordshire, whose collection, of which the earliest document is dated 1585, was transferred to the County Record Office in instalments between 1937 and 1940. It has been announced that the catalogue of this collection is now complete, and it includes 1,392 documents relating to the history of the surrounding district. An example of the sort of matter which repays preservation is a mention of the old system of meadow-sharing made in a document of 1783: "6 roods on the Doles, as they were formerly accustomed to fall out by lot." In documents of the same date the Quakers' meeting-house is dealt with and several deeds show building there. Quaint field names appear in ancient documents: Rookes Hill, Flannell, Short Poundage, Upper and Nether Sepperinges, Crankett End, Cowfair End. Everybody is interested in the history of his own county and of his own country. Solicitors are glad to know that their profession has such great opportunities to serve the cause of local and national history, and will be anxious to do their best to follow such examples as that provided by Messrs. Webber & Williams.

### Royal Court in the Channel Islands

A COMMITTEE of the Privy Council under the chairmanship of the Home Secretary and consisting of LORD SAMUEL, LORD AMMON, Mr. R. A. BUTLER, M.P., and Sir JOHN BEAUMONT is visiting the Channel Islands for the purpose of inquiring into proposed reforms of the constitution of Jersey and Guernsey and into judicial reforms. One of the proposed judicial reforms is of vital constitutional interest to States everywhere, for it concerns the separation of legislative and judicial functions. This has never been completely achieved even in this country, where Lords of Appeal in Ordinary have a most important voice in the legislative functions of the House of Lords, and even the Lord Chief Justice may attend at the deliberations of that august body, a privilege which the holder of that office rarely exercises. The Jurats in the Channel Islands are elected to be life members of the legislature, but they also sit as judges in the Royal Court, over which the Bailiff presides. This position is considered to be wrong by many lawyers in the Islands, and it is suggested that they should come up for re-election every six years and should retire at the age of seventy. The Jurats themselves consider that, as they are judges, they should not be subject to recurring elections. A proposal has also been put forward by the Royal Court that the Jurats should be limited in their judicial powers to the determination of questions of fact and the assessment of damages, while questions of law should be decided by the Bailiffs.

## LIMITATION OF ACTIONS AGAINST PUBLIC BODIES

SECTION 49 (1) of the Coal Industry Nationalisation Act, 1946, provides as follows: "The Public Authorities Protection Act, 1893, and s. 21 of the Limitation Act, 1939, shall not apply to any action, prosecution or proceeding against the board, or for or in respect of any act, neglect or default done or committed by a servant or agent of the board in his capacity as a servant or agent of theirs." ("The board" means the new National Coal Board.)

Subsection (2) is as follows: "In their application to any such action as aforesaid, ss. 2 and 3 of the Limitation Act, 1939 (which relate to the limitation of actions of contract and tort, and certain other actions) shall have effect with the substitution of references therein to six years of references to three years."

Protests were made in some quarters against these provisions on the ground that the board's position should be the same as that of any ordinary citizen. While we have much sympathy with this contention, we feel it necessary to point out that subs. (1) is a step in the right direction. In the absence of that subsection the board and its servants would have been protected by the Public Authorities Protection Act, 1893, as regards both civil and criminal proceedings in Scotland and criminal proceedings in England, and by s. 21 of the Limitation Act, 1939, as regards civil proceedings in England. These statutes respectively apply periods of six months and twelve months. Subsection (1) denies the board this privilege on both sides of the Tweed.

Subsection (2) is not easy to justify, however. It substitutes a period of three years for every period of six years prescribed by s. 2 or s. 3 of the Limitation Act, 1939. The periods of two years and twelve years prescribed by s. 2 are not altered. The Limitation Act applies only to civil proceedings in England. There seems to be no corresponding provision in the Coal Industry Nationalisation Act in regard to civil proceedings in Scotland. Nor, assuming that the board is not to be a "public authority," does there seem any particular reason for creating this special period of three years in England, by way of exception from the ordinary English rules as to actions of contract and tort, an exception not instituted in Scotland. Again, if the six-year period is to be halved, why not also those of two years and twelve years?

In our opinion the time has come for a fresh independent inquiry into the future of all special periods of limitation conferred on privileged defendants. The Act of 1893 was passed for the purpose of standardising and generalising the multitude of special periods of limitation previously prescribed in respect of the holders of offices. It swept away a large number of special privileges whose inconsistency was not justifiable. The shortness of the period of six months prescribed by the Act of 1893 was in its turn the subject of criticism, and eventually s. 21 of the Act of 1939 extended the period to twelve months in regard to civil actions in England. In the meantime, with the extension of Government

activities, the class of privileged defendants had grown considerably by 1939 and swelled many times over in the war years, not only through the multiplication of Government organisations, but through the fact that the words conferring the privilege are so wide as to extend it to every soldier driving a lorry in the course of his duties. It is also unsatisfactory that there is no consistency in the position of the various organs of Government. Thus, while a Minister or a clerk in his office is protected, the Bank of England seems not to be, since the Government has merely acquired its stock. On the other hand, the Wheat Commission is protected (*R. & W. Paul v. Wheat Commission* [1937] A.C. 139), and so are the London Passenger Transport Board (*Marshall v. L.P.T.B.* [1936] 3 All E.R. 83; *Jessup v. L.P.T.B.* (1946), 90 Sol. J. 380); the Scottish Milk Marketing Board (*Amour v. Scottish Milk Marketing Board* [1938] S.C. 445), and the Metropolitan Water Board (*Edwards v. M.W.B.* [1922] 1 K.B. 291). At present the main-line railway companies are not protected (*Swain v. Southern Railway* [1939] 2 K.B. 560), and their future position depends on whether the Government, in taking them over, follows the model of the Bank of England or that of the London Passenger Transport Board. While it is gratifying to find that the National Coal Board is not to be protected, and the draftsman deserves full credit for having inserted s. 49 (1) in the recent Act, there seems to be nothing to be said for introducing into an already chaotic situation the complexity of an entirely new kind of limitation, placing the National Coal Board half-way between protected persons and ordinary subjects. In the circumstances there must soon be, if indeed there is not already, a recrudescence of the unsatisfactory conditions which the Act of 1893 sought, not very happily, to cure.

While the privileges enjoyed by the Crown in litigation (of which the special periods of limitation are only some) may have had some justification in the past, their necessity has never been very clear. No doubt they were of minor practical importance in days when the functions of government were strictly limited, though even then their use did not necessarily make for justice, as we are reminded by the play based on the *Archer-Shee* case now running in London. But in these days, when the Government, rightly or wrongly, takes a major and increasing part in the financial, industrial and social life of the community, it cannot be justifiable to keep these ancient privileges in being for the benefit of the community's own servants as against the members of the community themselves. Not only should there be an early inquiry into the future, both in England and Scotland, of special periods of limitation, but also into the enjoyment by Government offices and officials of the Crown's privileges in the courts. The findings of an inquiry of this sort will obviously command no confidence if it is conducted by such interested parties as persons in Government or local government employment. We suggest that it should be committed to a Lord of Appeal and one English and one Scottish judge.

## COMPANY LAW AND PRACTICE

### WINDING-UP ORDERS: WHEN JUST AND EQUITABLE

UNDER s. 168 (6) of the Companies Act, 1929, the court is empowered to wind up a company if the court is of opinion that it is just and equitable that the company should be wound up. This is a useful provision, and one which is quite frequently invoked; though the Cohen Committee thinks that it can be made even more useful. At one time the tendency was to take a somewhat narrow view of the subsection, and to construe it *ejusdem generis* with the preceding subsections—an unfortunate tendency directly traceable to the judgment of Lord Cottenham in *Ex parte Spackman* (1849), 1 M. & G. 170.

This tendency was, however, getting less pronounced, and the judgment of the Judicial Committee of the Privy Council in *Loch v. John Blackwood, Ltd.* [1924] A.C. 783, may be said finally to have restored utility to the subsection.

This is how it was put by Lord Shaw of Dunfermline in that case: "In the opinion of the Board it is in accordance with the laws of England . . . that the *ejusdem generis* doctrine (as supposed to have been laid down by Lord Cottenham) does not operate so as to confine the cases of winding up to those strictly analogous to the instances of the first five subsections of s. 129" (s. 129 of the 1908 Act was, of course, the corresponding section to s. 168 of the 1929 Act).

There are a number of headings under which it is possible to group the various circumstances in which such orders have been made, but the most important are probably the substratum and the partnership cases.

As to the substratum. Lord Cairns was the first to suggest that the disappearance of the substratum might well bring

the case within the just and equitable clause. This is what that great man said: "If it were shown to the court that the whole substratum of the partnership, the whole of the business which the company was incorporated to carry on, had become impossible, I apprehend that the court might either under the Act of Parliament or on general principles order the company to be wound up" (see *Re Suburban Hotel Co.* (1867), 2 Ch. App. 737).

There is no doubt, however, that this suggestion of Lord Cairns was subsequently taken a good deal farther—and it is submitted, much too far—by another great man, Sir George Jessel, M.R., in *Re Haven Gold Mining Co.* (1882), 20 Ch. D. 151. It is, however, unnecessary to go into this at all, because the doctrine has now been finally brought back to what can be regarded as its proper limits.

The heyday of the application of this rule is to be found in the last century, and, apart from one or two cases in the first decade of this century, there are few cases of any general interest on this point. But a recent case is both interesting and important, and will repay carefully study; this is *Re Kitson & Co., Ltd.* [1946] 1 All E.R. 435.

In that case the company, which was incorporated in 1899, had as its first object "to acquire and take over as a going concern the business now carried on at Airedale Foundry, Hunslet, in the City of Leeds, under the style or firm of 'Kitson & Co.' and all or any of the assets and liabilities . . . etc." It then had a series of perfectly general objects, such as to carry on the business of locomotive engine manufacturers, ironfounders, mechanical engineers and manufacturers of agricultural implements and other machinery, tool makers, brassfounders, metal workers, and to carry on any business relating to the winning and working of minerals, the production and working of metals, etc.

In July, 1945, the company was still carrying on business at the Airedale Foundry, and it entered into an agreement for the sale of its business, with certain exceptions of a minor character, and assigned that business to a purchaser. A winding up petition having been presented, alleging that the substratum had gone, it was argued that the sale had destroyed the substratum of the company; the purchase of Kitson's business in 1899 was expressed to be the first in sequence of the company's objects and all the other objects in the memorandum must therefore, it was argued, be regarded as ancillary.

Lord Greene, M.R., dealt with that argument in this way, and I make no apology for quoting somewhat extensively from his very interesting judgment: "We are not considering now whether failure in 1899 to acquire the business of Kitson and Co. would have destroyed the substratum of the company . . . but the question we have to decide is whether, that business having been acquired forty-six years ago, the disposal of it last year amounted to a destruction of the substratum. In my opinion the main and paramount object of this company was to carry on an engineering business of a general kind. It was such a business that was carried on by Kitson & Co., and I cannot bring myself to construe this memorandum as limiting the paramount object and restricting the contemplated adventure of the shareholders to the carrying on of what could be called the business of Kitson & Co. The impossibility of applying such a construction seems to me to be manifest when one remembers that a business is a thing which changes. It grows or it contracts. It changes: it disposes of the whole of its plant; it moves its factory; it entirely changes its range of products, and so forth. It is more like an organic thing."

This view had by no means always been taken in the past and there are a number of cases which must now be taken as overruled—if, indeed, *Cotman v. Brougham* [1918] A.C. 514, had not already done so. These are cases where the courts have been at pains to disregard general objects clauses: cases which culminated in *Stephens v. Mysore Reefs (Kangundy) Mining Co.* [1902] 1 Ch. 745, where a completely artificial construction was put on the memorandum so as to be able to say that the substratum had gone.

These last-mentioned cases differ entirely, of course, from such a case as *Re German Dale Coffee Co.* (1882), 20 Ch. D. 169.

In passing, one might observe that not only the Germans, but many others, have, since 1882, when that case was decided, had practical experience of coffee made out of even more improbable subject-matter than dates. There the primary object was to acquire and work an invention "for which a patent has been granted by the Empire of Germany"; there were, it is true, other objects, but it was held that the company was formed simply to buy the patent and to work it either with or without improvements. In fact, the Empire of Germany refused to grant a patent, and the winding up order was made.

This distinction is neatly put by Lord Greene in the *Kitson* case, *supra*. This is what he says: "It must be remembered in these substratum cases that there is every difference between a company which on the true construction of its memorandum is formed for the paramount purpose of dealing with some specific subject-matter and a company which is formed with wider and more comprehensive objects."

One other point of some moment arose in the *Kitson* case, with which it is impossible to deal fully without going into the facts in considerable detail; but I think the point can be fairly summarized quite shortly. There was evidence before Uthwatt, J., the judge of first instance, that the board of directors had contemplated utilizing the assets of the company in purchasing a number of shares in a variety of companies; this took the form of an affidavit sworn in some earlier Chancery proceedings. Uthwatt, J., refused the company an adjournment to enable it to produce evidence on this point, though, in fact, there was in existence an affidavit in answer, which made two points, one that the contemplated purchase of shares was to be subject to the consent of the shareholders, and the second that the directors, in view of the first affidavit, had decided not to go on with the proposal.

The first affidavit was introduced to show that, at the time of the proposed purchase, the directors had no intention of carrying on an engineering business.

Lord Greene says this: "To say that the question whether substratum has gone or has not gone can be affected by the intention that happens to exist in the minds of the board at a given moment appears to me to be going into irrelevant considerations. First of all, the board is not the company . . . We are dealing with substratum, and to say that the substratum can exist at one moment and cease to exist a moment later, or *vice versa*, simply through a change of intention of the board or of the shareholders (I know not which) seems to me to lead into a morass."

So much for *Kitson* and the substratum. Now a word or two on the partnership cases: these are frequently referred to as deadlock cases, but while deadlock is a ground for winding up, it is really on a branch of the general rule that if you have a company which is virtually a partnership, though in form a company, it should be wound up by the court, if the court would dissolve such a partnership.

The two most useful cases in this line of country are *Re Yenidje Tobacco Co.* [1916] 2 Ch. 426, and *Re Davis & Collett, Ltd.* [1935] Ch. 693. Both of these were, in effect, "two-man" companies, and in each case the judge took the view that they were, in substance, partnerships; in the former case there was a deadlock, in the latter there was not. But in each case it was held that, if the company had been a partnership, the court would have ordered dissolution, and that as the same principles must be applied to a company, the company should be wound up.

Broadly speaking, the court will not usually make an order under this subsection where there is an alternative remedy; and the Cohen Committee has recommended that the power of the court to make a winding-up order shall be exercisable notwithstanding the existence of an alternative remedy, and also that (since winding up may not benefit minority shareholders) the court should have power to impose upon the parties to a dispute whatever settlement the court considers just and equitable, if it is satisfied that a minority of the shareholders is being oppressed. This suggestion has at least the merit of boldness, though whether it would be of any real use is open to question.

## A CONVEYANCER'S DIARY

## RESALE OF NEW MOTOR CARS

I AM indebted to the British Motor Trade Association for putting at my disposal a set of the documents used in carrying out their scheme for preventing the resale of new motor cars within six months of delivery. I take this opportunity to acknowledge their courtesy in doing so.

The scheme is set out in a document called "Instructions to all distributors and dealers"; the person to whom it is addressed is called in the covenant itself the "dealer." The dealer is instructed to write to each customer "when a car is about to be allocated to him that the allocation is conditional upon his executing a deed of covenant." The instruction proceeds that "In the unlikely event of your customer refusing to sign a covenant he must not be given delivery . . . you will, of course, retain the order of the customer who refuses, and it will remain good for future delivery." When taking new orders, the dealer is to explain the deed of covenant to the customer and obtain his agreement to execute it when his delivery comes through. After execution, each covenant is to be sent to the Association; there is machinery for obtaining consents to sales earlier than those allowed by the covenant; and dealers are called upon to report to the Association any actual or expected breach of the covenant by their own customers and any cases of "new or nearly new cars licensed on or after the 15th August, 1946, being offered for sale above list price plus purchase tax—whenever possible please report the registration number; that is most important as it will enable us to trace the deal, the date of registration and the source of trade supply."

It is clear from the above and from certain new rules of the Association which are on the same document, that the Association have prepared a thorough scheme for detecting breaches of the covenants, and there seems every likelihood that breaches will be found and that litigation will follow. I now turn to the deed itself, whose enforcement will be in issue; it is set out verbatim below. There is a slightly varied form for use in hire-purchase cases, but I shall discuss only the case of a straightforward sale.

THIS DEED made the            day of            194 Between

in the County of            (hereinafter called "the Owner") of the first part  
and The British Motor Trade Association, of 97 Park Lane, London, W.1 (hereinafter called "the Association") of the second part and            of            (hereinafter called "the Dealer") of the third part.

Whereas:—

A. The Dealer has sold and delivered to the Owner the motor vehicle (hereinafter called "the said vehicle") whereof short particulars enabling the same to be identified are set out in the Schedule hereto.

B. The Association is an Association of manufacturers and dealers engaged in the Motor Industry of Great Britain whose objects are to protect the interests of the Motor Trade and to safeguard the purchasing public and for this purpose *inter alia* to prevent price inflation of motor vehicles and of which Association the Dealer is a member.

C. As part of the consideration for the said sale the Owner agreed with the Dealer that he would upon the said vehicle being delivered to him by the Dealer enter into such covenants with the Association and the Dealer as are hereinafter contained.

Now this Deed witnesseth and it is hereby agreed as follows:—

1. The Owner hereby covenants with the Association and (as a separate covenant) with the Dealer that he will not during the period of six months from the date hereof without the consent in writing of the Association which consent shall not be unreasonably withheld use the said vehicle or permit the same to be used for any purpose whatever other than for the private, professional or trade purposes of the Owner so that (without prejudice to the

generality of the foregoing) the Owner shall not during the said period without the consent in writing of the Association sell, give, pledge, hire (whether by way of hire purchase or otherwise) or otherwise deal with the said vehicle in any manner whereby the property therein is or may be transferred to any other person.

2. The Owner hereby covenants with the Dealer that he will for every breach of the covenant on the part of the Owner hereinbefore contained pay to the Dealer as and by way of liquidated damages and not as a penalty (but without prejudice to any other rights or remedies of the Dealer hereunder) the sum of £           

In witness whereof the Owner has hereunto set his hand and seal the day and year first above written.

(Seal)

Signed, Sealed and Delivered by the above named Owner in the presence of

Witness

Address

Occupation

The Schedule.

Make of Car

Model

Car or Chassis Number

Registration Number

Let us now suppose that after a week the owner is threatening or intending to sell his car at a large profit, that this fact comes to the knowledge of the Association and the dealer before title has passed, that they issue a writ against the owner before title has passed, and that the motion for an interlocutory injunction is heard before title has passed. This combination of circumstances may seem highly improbable, but so far as I can see it is the only way in which there could be a possibility of enforcing the covenant by injunction. Assuming that the statements in the recitals are not called in question, so far as they relate to the Association, it still seems to me that the Association's claim for an injunction must fail. It is true that Lord Cairns said in *Doherty v. Allman* (1878), 3 App. Cas. 709, that if parties contract with their eyes open that a thing shall not be done a court of equity has no discretion but will always give an injunction against a threatened breach. But this statement was expressly qualified by the requirement that the contract shall have been made for valuable consideration, and it is a well-established principle that equity will not aid a volunteer. So far as I can see, it would be impossible to argue that any consideration has moved from the Association, and I am therefore of the opinion that the Association would fail in proceedings for an injunction. As regards the dealer, the position is different, for he has sold the car, and I think, therefore, that his action would succeed, so far as the injunction is concerned. But proceedings for an injunction can, at best, be very rare, because they could only be taken before the covenantor has assigned the ownership of the car to someone else. The assignment of a chattel is made so easily that it will seldom be possible to discover the intention in time to permit it being carried out.

The real sanction must clearly be the action for damages, but here again there are grave difficulties. Since the covenant is under seal, there is, of course, nothing to prevent the Association from succeeding in an action at law for its breach. But what is the damage to the Association? Substantial, as distinct from nominal, damages, must represent in money some actual and material loss to the plaintiff. While, no doubt, the Association exists in part (to quote the recitals in the deed) to protect the purchasing public and to prevent price inflation of motor vehicles, how can the resale of a particular car at a profit (or, even the resale of many cars at profits) be proved to have inflicted any damage at all on the Association, any more than cruelty to an animal, even in

breach of covenant, could ground an action for damages by the R.S.P.C.A.? Price inflation, surely, benefits the manufacturer, even if it damages the community; and in any case, I doubt if these general ills are relevant to the damage (if any) inflicted by the breach of the particular covenant sued upon. Since a covenant under seal has been made and broken, the Association is, of course, entitled to nominal damages, but that is all. As regards the dealer, how does he suffer any actual damage by the resale at an enhanced price, or at all, of a car which he has sold? He has no longer any interest in such a car. He also is entitled therefore to nominal damages only.

It is against this background that one must consider cl. 2 of the covenant which provides that for every breach of the covenant the owner will pay the dealer £x "as and by way of liquidated damages and not as a penalty (but without prejudice to any other rights or remedies of the dealer hereunder)." As we have seen, the dealer's other rights are to an injunction in very rare cases, and to judgment for nominal damages for breach of covenant. That being so, I do not think that the court would hold that the sum of £x prescribed by cl. 2 was anything but a penalty. This sum of £x, according to the circulated instructions, is to be no less than 45 per cent. of the aggregate of the list price plus purchase tax, and it must then be rounded off to the nearest £5 above the sum so found. Thus, according to the instructions, the sum recoverable under cl. 2 is £195 in respect of a car costing £432, including purchase tax. But, as we have seen, the dealer suffers no actual damage at all.

The law on the subject is clearly stated in one of the cases in which the Dunlop Pneumatic Tyre Company Limited sought, thirty years ago, to impose control on the subsequent selling prices of its products. The case is *Dunlop v. New Garage, etc.* [1915] A.C. 79. Dunlop succeeded in recovering the "liquidated damages" fixed by the contract in respect of the breach of a provision in a contract, entered into between an agent for Dunlop and a dealer, whereby the dealer was forbidden to resell covers below list price. The sum so fixed was £5, and the list price was £4 1s. The Master had found, upon a special reference to him, that the actual damages in respect of a single breach were £250. It was held that the £5 was a "genuine covenanted pre-estimate of damage": see the speech of Lord Dunedin, especially at p. 86. The evidence to support the Master's finding was that undercutting was an infectious disease which, unless checked, spread rapidly and wrecked the appellant's selling organisation. But that was a very different

matter from the present one: the plaintiff was the manufacturer, and he complained of undercutting, which, naturally, caused him damage. The limits of the efficacy of the arrangements were shewn by the second case, *Dunlop v. Selfridge* [1915] A.C. 847. The contract seems to have been identical with that in the first case, and in both was made by a middleman with the defendant. But, whereas in the first case it seems to have been accepted that the middleman was Dunlop's agent, the agency was challenged in the second case, with the result that Dunlop failed entirely, the ground for the decision being that no consideration moved between them and the purchaser from the middleman. In the present case of the motor trade, allowance seems to have been made for *Dunlop v. Selfridge* by the provisions that the contract shall be under seal and that it is the dealer and not the Association who is to recover the "liquidated damages." But the draftsman has not been equally successful as regards the "liquidated damages." Words do not alter facts; fixed sums such as this £x are penalties if they are *in terrorem* and liquidated damages if they are a genuine pre-estimate, whatever they are called. In *Dunlop v. New Garage* there was evidence of actual and substantial damage which the contract sought to quantify. But in the present case there is no actual damage.

For these reasons, therefore, I do not feel that any purchaser need hesitate to sign one of these covenants. If he breaks it and is sued, he should be quite safe in paying £5 into court, which should leave him an ample profit. On the other hand, if the purchaser is inclined to be awkward, a dealer may find himself in serious trouble if he tries to force a covenant on a purchaser who had already ordered a car before 15th August, 1946, or to interfere with the purchaser's promised priority if the purchaser refuses to sign. It depends on the existing contract between dealer and purchaser; some will allow the dealer to add new terms, others will not. All one can say as a general rule is that it may be dangerous to dealers to comply with the instructions in regard to orders already accepted by them.

I am sorry to reach these conclusions, which, if they are upheld by the courts, will be fatal to a well-intentioned scheme with which most of us must have much sympathy. But I feel no doubt about them. At the same time, I think a workable scheme could be devised, though it would be more complex, on the footing that title to the car would remain in the dealer for the first six months. The Association would be wise to explore some such device.

## LANDLORD AND TENANT NOTEBOOK

### RENT CONTROL: TWO DEVOLUTION CASES

*Stafford v. Levy* (1946), 62 T.L.R. 487 (C.A.) and *Lawrance v. Hartwell* (1946), 62 T.L.R. 491 (C.A.), have shown us that even in the year 1946 the effect of involuntary assignment of the interest of a protected tenant may be the subject of argument.

In *Stafford v. Levy* the plaintiff had let controlled premises to the defendant for a fixed term. During the currency of that term the defendant was adjudicated bankrupt. His trustee did not disclaim, kept up payments of rent and allowed the defendant to remain in occupation. When the tenancy expired the trustee made no claim to the premises and the landlord sued for possession.

A case relied upon by the defence was *Sutton v. Dorf* [1932] 2 K.B. 304, which arose out of the bankruptcy of a statutory tenant. The court had no difficulty in distinguishing that authority, the main function of which was to declare that *Parkinson v. Noel* [1923] 1 K.B. 117 was considered to have been overruled by decisions in which the legal position of a "statutory" tenant, as a person who is not a tenant at all, but who enjoys a "status of irremovability," had gradually been defined. In the light of such decisions it was no longer possible to uphold the view that the interest in question was property which passed to the trustee under the provisions of ss. 53 and 167 of the Bankruptcy Act, 1914,

and the disclaimer which the defendant's trustee had purported to give was therefore a nullity. This would not be applicable to the case before the court, the contractual tenancy having duly vested in the trustee.

Another case which was cited, *Reeves v. Davies* [1921] 2 K.B. 486 (C.A.), might at first sight appear to support the defence in *Stafford v. Levy*. For in this case the defendant had been adjudicated a bankrupt while a contractual tenant, and his trustee had disclaimed the tenancy; and it was held that the landlord then became entitled to possession. The judgments of Scrutton and Younger, L.JJ., certainly read as if the decision that the defendant had not qualified for a statutory tenancy were based on the fact that the trustee had disclaimed: "the right to the actual possession has been transferred to the landlord by the disclaimer of the person entitled to such right" and "the effect of the disclaimer was that the whole of the bankrupt's former interest in the property reverted to the lessor." But the judgment of Lord Sterndale, M.R., placed the disqualification further back, and by referring to a passage in that judgment running "where by statute the interest of the tenant of a house has been entirely divested or taken away from him and vested in his trustee by operation of law, the tenant has no more interest in the property than any passer-by in the street," the court in

*Stafford v. Levy* was able to "apply" *Reeves v. Davies* so as to negative any right on the part of the defendant.

The result might have been achieved by a different approach. The defendant, in order to succeed in his plea, has to show that he retained possession by virtue of the provisions of the Increase of Rent, etc., Restrictions Acts (s. 15 (1) of the Act of 1920), and then no order for possession can be made against him except on the recognised grounds. But a tenant who retains possession by virtue of the permission of the person to whom possession has been transferred by another statute does not retain it by virtue of the Increase of Rent, etc., Restrictions Acts. Whether that person exercises a right to surrender (such being the nature of disclaimer) or not is immaterial as regards the status of the involuntary transferor.

In *Lawrance v. Hartwell* the involuntary assignment of the term was by death. First, a tenant for a term of three years held over on the expiration of his term, and, as *Morrison v. Jacobs* [1945] K.B. 577 (C.A.) recently showed, the result, in the absence of evidence to the contrary, would be a statutory tenancy. He died a statutory tenant, and his widow retained possession; but after a few months the plaintiff landlord negotiated a tenancy (verbally) with her, and when she died it was found that she had made a will (a) appointing the defendant in the subsequent action her sole executrix, and (b) making the defendant her sole beneficiary. Some time after the grant of probate the plaintiff gave notice to quit.

The argument advanced for him was that since the death of the widow of the original tenant, who had admittedly acquired a contractual tenancy, the defendant had occupied the dwelling-house as executrix. This was, of course, answered by invoking the definition of "tenant" in s. 12 (1) (f) of the Increase of Rent, etc., Restrictions Act, 1920: "any person deriving title under the original tenant." When the testatrix died the whole beneficial and legal interest in the house vested in the defendant.

But the facts did suggest a problem which might arise one day: suppose an executor who is *not* the devisee of a contractual tenancy be occupying a controlled house when the testator dies, is he protected if the contractual term be determined? It is, perhaps, unusual nowadays for the judiciary to discuss hypothetical questions at any length, but in this case Morton, L.J., has given us the benefit of a careful examination of the position visualised. The learned Lord Justice's conclusion is that if the executor should reside in the house pending (and apparently the length of the period would not matter) the beneficiary's demand for the assent, the Increase of Rent, etc., Restrictions Acts would protect him. And in the result the decision will provide support for those practitioners who urge landlord clients to give their tenants notice to quit and convert the tenancies into statutory tenants though no grounds for possession seem likely to become available.

## TO-DAY AND YESTERDAY

**September 2.**—In January, 1819, Mr. John Stockoe, surgeon in H.M.S. "Conqueror," was permitted to go ashore at St. Helena to afford medical attention to Napoleon, held in captivity there, and officially referred to as General Bonaparte. He was subsequently tried by court martial on board the "Conqueror" in St. Helena roads on charges of having communicated with Bonaparte or his attendants on subjects not connected with medical advice, having signed a paper purporting to be a bulletin of his health and delivered it to him or his attendants, having falsely suggested in the bulletin that he was in "considerable danger and that no medical attendant was at hand, having conveyed information to him and his attendants of their money affairs, having referred to him in the bulletin as "the patient" instead of General Bonaparte, having furnished them with false or colourable pretences of complaint. Stockoe was sentenced to be dismissed the service, but recommended for half pay.

**September 3.**—On 3rd September, 1810, Richard Thomas was hanged at the New Prison in Horsemonger Lane for forging and uttering a cheque for £400 8s. He was "a young man of very genteel appearance" and he "died a penitent."

**September 4.**—On 4th September, 1860, Lord Chancellor Campbell wrote in his diary, after the death of his friend, Henry Tancred: "I am now not only in the front rank but the most conspicuous object for the dart of the unconquerable foe. Lyndhurst and Brougham are my only seniors in the law, Lyndhurst by seven or eight years, Brougham by one." It was the eve of his seventy-ninth birthday and before another summer was out, death claimed him with dramatic suddenness. Lyndhurst died next and Brougham last in 1868.

**September 5.**—In the previous year, 1859, Campbell had gone to his native Scotland for a while, and on 5th September Lyndhurst had written him a bantering letter: "Have you forgotten the lecture read by King William . . . to Lord Brougham for his irregular conduct in taking the Great Seal to Scotland? You appear to have followed the precedent but without much fear of the lecture being repeated under a wiser rule." There was a legend that Brougham had used the Great Seal for making pancakes at Taymouth to amuse the Marchioness of Breadalbane.

**September 6.**—When Alexander Keith, laird of Northfield, in Banffshire, took a fisherman's daughter as his second wife, George, his son and heir, left home in dudgeon. Accordingly, when the old man died in 1756 his household, besides servants, consisted of his wife and her five children, of whom William, aged seventeen, was the eldest. He had been medically attended, and at first the death had been accepted as natural, but when George returned for the funeral as the new laird, he seized on certain discolourations on the neck of the body to accuse his step-mother and William of murder. For some reason, however, they were not

tried at Aberdeen till ten years later. The suggestion that they had strangled the laird in bed was supported only by circumstantial evidence but they were found guilty and on 6th September 1766, condemned to death. Both, however, were subsequently granted a free pardon.

**September 7.**—On 7th September, 1803, John Killen, who kept a drinking cellar in Thomas Street, Dublin, and was nicknamed "the husband of the dirty cook," and John MacCann, who kept an ale-house in Dirty Lane, were tried in Dublin for their part in Robert Emmett's rising. There was evidence that they had killed wounded men lying on the ground. Both were condemned to death.

**September 8.**—On 8th September, 1755, at the sessions at the London Guildhall, "Henry Samuel was convicted of being a common Sabbath-breaker and profaner of the Lord's Day by suffering card-playing on Sundays in his house in Duke's Place and fined 13s. 6d. and ordered to be imprisoned three months in Wood Street Compter."

### MIDDLE TEMPLE LIBRARY

The new temporary Middle Temple Library, between Brick Court and Essex Court, is nearing completion. Like that of Gray's Inn, it is, in the words of Mr. Winston Churchill, in "the architecture of the aftermath." Meanwhile the former bomb-damaged library has been demolished save for its substructure. Its final fate was inconceivable on that day, 31st October, 1861, when Edward, Prince of Wales, declared it open and was called to the Bar and elected a Bencher of the Society. After a service in the Temple Church, the company proceeded to a magnificent banquet in the Hall at which the Prince gave the toast of "Domus." In his honour the great oriel window at the south end was filled with heraldic glass reproducing the coats of arms of the royal princes from those of Richard the Lion Heart to his own. Though architecturally the building was rather less than satisfactory, its dimensions were imposing, for the library chamber measured 85 feet by 42 feet, and its height to the apex of the open hammer-beam roof was 42 feet. The modest accommodation now provided thus represents a decided decline of fortune. It is not, however, the first time that the Society in this connection has had to start from unpromising beginnings. In Henry VIII's time it is recorded that "they had a small library, in which were not many books besides the law and that the library by means that it stood always open and that the learners had not each of them a key unto it, it was at last robbed and spoiled of all the books of it." A century later a windfall came to the Society in the shape of the bequest of the library of Robert Ashley on his death in 1641, together with £300 for the maintenance by its interest of "some able student" chosen as keeper by the Benchers.

## EARLIER FRESH START

In the early eighteenth century the Middle Temple Library seems again to have required rescuing from evil days for Henry Carey, complaining of his dismissal from the post of keeper, gives an impressive account of the work he had devoted to bringing it to good condition: "I employed myself in regulating and reducing to decency and order a place which, through long neglect, was become a perfect chaos of paper and wilderness of books, which were mixed and misplaced to such a degree that it was next to an impossibility to find out any particular book without tumbling over the whole. The undertaking cost me about twelve months' hard labour and pains, besides money out of my own pocket to transcribers. However, I went forward with the greater alacrity

because Mr. Ludlow, then Treasurer, encouraged me by repeated promises (which I now may call specious and empty) of reward when completed, as now it is, I having made a new catalogue in five alphabets with columns (all of my own invention) of all the tracts contained in the library, which catalogue is in a hundred sheets in folio, and the books are now so regularly ranged and the catalogue so plain, easy and exact that anybody may go directly from it to any required book or pamphlet without any difficulty or hesitation; so that not only the catalogue but even the library itself are evident demonstrations of my labour and instances of their ingratitude to me, who egged me on to this work without rewarding me for it." In the early eighteenth century the librarian's salary was £30 a year. So was the washerwoman's.

## INTERNATIONAL LAW ASSOCIATION

THREE hundred members of this Association from several countries met at Cambridge from the 20th to 24th August for its first conference since 1938, when it met at Amsterdam.

Dr. J. A. VAN HAMEL, the retiring president, took the chair and, after addresses of welcome from the University and the city had been delivered, said that through more than five years of occupation the Continental members had known that a day would come when they would stand together again to proclaim openly the principles in which they believed. The Germans had suggested to the Dutch Branch that it might offer a platform to German experts on international law; its leaders had made it quite clear that they would rather be disbanded than help enemy propaganda.

He welcomed to the chair LORD PORTER, the new president, who said that he had found it taken for granted by writers and speakers that the war would hasten the coming of an international order which would comprise the majority of civilised nations. Unfortunately the effect seemed to be to make countries fear any possibility of an alien rule. The international lawyer, in seeking to promote obedience to national law, could not legislate beyond the accepted standards of the world. There already existed a considerable body of international law; its rules had been disastrously broken, but its tenets remained. Upon that foundation it was possible to begin to build again through the United Nations and its principal judicial organ in the International Court of Justice.

Dr. C. J. S. WARENDORF explained the aims and work of the United Nations Educational, Scientific and Cultural Organisation, and suggested fields of activity in which the Association could co-operate with it.

In a discussion of the present structure of the United Nations Charter and the direction of desirable changes, Professor A. DE LA PRADELLE (France) delivered an eloquent address on the right of man to respect for his human personality and immunity for his physical body.

The Hon. W. S. CULBERTSON, president of the American Branch, said that the Americans thought of liberty as the heritage which men won in the struggle against power. He saw a great need for the true understanding of power and the realisation that the evil lay not in power but in its misuse. Power itself was necessary to law and order, and the aim of international lawyers must be to make responsible power effective in the world. For a time the United Nations and the old balance-of-power system should function together, with constant effort to strengthen international government.

Mr. F. N. KEEN declared that the United Nations were defective in means for arriving at definite and binding decisions, in security for justice and in the machinery of control. Voting power should be proportional to the population and strength of a State. A revised constitution should incorporate a legislative assembly with a power of making laws to govern defined matters of international relationship. These would be binding upon all the States and they would be required to co-operate in their enforcement. Legislative authority could be given to changes of national rights or obligations recommended by appropriate international tribunals.

Dr. RAPHAEL LEMKIN (U.S.A.) proposed that the United Nations, together with others whom they might invite, should enter into an international treaty which would provide for the prevention and punishment of "genocide" (mass destruction of racial groups).

Professor AUGUST SIMONIUS (Switzerland) admitted the logic of allowing the Great Powers a preponderant voice, but condemned the provision by which a dispute to which a Great Power was party could be removed from the cognisance of the United Nations. He urged the Association to do everything possible to abolish the right of veto.

## LAW OF INTERNATIONAL COMMERCE

Commercial law occupied a considerable part of the conference's attention.

Mr. ROBERT BURRELL, K.C., dealt with the special problems arising out of the war which affected the protection of trade-marks. An international arrangement on similar lines to that signed at Berne in 1920 was, he said, urgently necessary. The term of three years in which application might be made for the removal of deceptive trade-marks should be capable of extension, and the agreement should provide that the importation of relief supplies bearing trade-marks resembling those already registered should not adversely affect the distinctive character or validity of local registrations. The expropriation of enemy-owned trade-marks could not conveniently be the subject of uniform international action, but word marks, particularly those describing chemical and pharmaceutical preparations, might be suspended in favour of persons desiring to trade in such articles until they had had time to establish an alternative name or description.

Judge ALGOT BAGGE (Sweden) in a paper on uniform national legislation in the field of commerce, expressed confidence in the possibility of achieving a uniform national law of the sale of goods, at any rate partially. The national laws belonging to each of the great juridical systems—the Anglo-American, Latin and German—might be unified; the Scandinavian system was already uniform. Where this could not be achieved, the rules governing conflict of law should be unified.

Sir LYNDEN MACASSEY, K.C., LL.D., said that a uniform international commercial arbitration had five essentials. The arbitration clause should be standardised and invite the parties to specify by what country's laws the contract was to be construed. Any rules for general private international commercial arbitration must provide for the alternatives of either judicial arbitration or *amiable composition*. Organisations must exist to administer the scheme in every country covered by it. Each country should pass a uniform law sufficiently wide to give validity to the scheme and provide for the enforcement of awards; this would be the most difficult of the conditions to achieve. An international authority must supervise the working of the scheme. The Association should consider and formulate the principles upon which the scheme should proceed.

Professor B. A. WORTLEY invited the conference to consider a draft made by the Rome Committee which had sat for six years before the war. It had, he said, dealt with all Sir Lynden's points and would probably now go before the United Nations.

Professor J. OFFERHAUS (Holland) outlined the problems of unifying the present national rules dealing with conflict of laws concerning the formation of contract. Capacity to contract should be left out of any treaty because it was so closely connected with the personal law that the treaty would also have to refer to the national or domiciliary law of the parties, and so be made unworkable. Delicate questions arose over the boundaries of formation of contracts, touching national sensitivity as well as the desirability of equal treatment of foreigners and nationals. For several reasons the invalidation of contracts should also be left out of the treaty. If such questions as fraud, mistake and undue influence were included, it must be realised that some laws preferred the personal law and others the proper law of the contract, and that where the existence of the contract itself was under discussion it might be fictitious to choose the law governing the contract. Many questions arose on offer and acceptance—should contracts by correspondence or wire be dealt with? Should the proper law of the contract or any other law be chosen? Should the same law be chosen for both parties? Should the treaty embody all or only mercantile contracts?

Professor MAX GUTZWILLER (Switzerland) saw great hope for the future in evidence that the problems, terminology and

formulae of commercial law, and also the theory and basic assumptions were now common to all countries.

#### DIVORCE AND NULLITY

Mr. WILLIAM LATEY opened a discussion on divorce jurisdiction and mutual recognition of decrees. He recalled the recommendations of the committee which had proposed to the Oxford Conference in 1932 that, by an international convention, each contracting State should legislate that any decree of divorce pronounced by a competent court of one State should, at the request of either party, be recorded in the competent court of any other contracting State. Such a decree must be pronounced by a competent court of the State in which either spouse was domiciled, or of which either party was a national, or in which the marriage had been celebrated, or in which either party had resided for three out of the four years preceding the institution of a divorce suit, or for one year of the eighteen months immediately before the institution of a nullity suit. There was no reasonable prospect of establishing a common principle of jurisdiction, and the only possible solution of widespread anomalies lay in the mutual recognition by States of the various bases of jurisdiction exercised by others. Such an arrangement would require, among other things, the understanding by foreign courts of the peculiar British doctrine of collusion. It might be possible to secure some uniformity in the waiting period required before an interim decree of divorce became final.

Professor G. C. CHESHIRE said that a sharp distinction should be drawn between jurisdiction and choice of law. Jurisdiction should be wider, for there was no objection to increasing the number of places in which a remedy could be obtained. It was

outrageous that jurisdiction should be assumed in the country where only the petitioner was resident. The law to be chosen, where the parties were seeking divorce in their country of domicile or nationality, should be the *lex fori*. No scheme founded on a definite length of residence was practicable, but divorce should be granted only for a reason which was valid both by the *lex fori* and by the personal law of the parties.

#### CURBING AGGRESSION

At the last session of the conference speakers outlined methods of curbing the warlike spirit of aggressive nations.

Dr. J. A. VAN HAMEL saw little hope in outside intervention. No defeated population, he said, would accept a form of government, or propaganda, or an educational system imposed on it from without, though a little good might be done by reliable foreign inspectors of teachers' training schools and university teaching. Severe penalties should be recommended against all activities or public utterances aimed at promoting distrust or discord. The Press and radio should be permanently supervised and held open for explicit denials and refutations of misleading matter. He particularly stressed the possibility of independent loyal missionary work in the political field. Nuclei composed of a few men and women free from any governmental influence should be set up in various centres to disseminate sound international notions of good understanding. The workers should be prepared to devote their life to the work for a period of years at a modest remuneration. Central direction was essential. The psychic state of a country full of aggressive tendencies could only be reformed by the exercise of well-tried principles such as complete application and self-denial, singleness of purpose, well-assured direction, and the absence of all ulterior motives.

## CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

#### Drafting

Sir,—I have read with interest Managing Clerk's letter on the above subject in your issue of the 24th August.

I do not think that the established precedents for documents such as settlements, leases, wills, articles of partnership, powers of attorney, etc., can be further simplified with advantage.

Mortgages, however, particularly where the amount involved is comparatively small, could be shortened by making them by way of statutory mortgage.

A great part of conveyancing work is connected with the purchase of property and here a considerable saving in time and paper could be effected by omitting the verbose recitals so often found in these documents.

I recently deduced title to property vested in personal representatives. The deceased estate owner was a lady of nearly ninety. The property had been devised to her by an old will subject to two prior life interests which fell in over fifty years ago. When the draft conveyance was submitted for approval, I found that the draftsman—although the contract expressly required him to assume the death of the two life tenants—had commenced his recitals with a recital of seisin of the original testator together with everything else which was mentioned in the abstract.

A conveyance, sir, is what its name implies and not an abstract of title. That being so, it can rarely be necessary to recite anything other than the seisin of the vendor and the agreement for sale.

The following are a few recitals of seisin which I suggest might be generally adopted with advantage to all concerned:—

In a sale by personal representatives:—

"The vendors are seised of the property hereinafter described  
"in unencumbered fee simple in possession as personal  
"representatives of A.B. deceased."

In a sale by a beneficial owner with a mortgagee joining:—

"The vendor is seised of the property hereinafter described  
"in fee simple in possession, subject to a mortgage dated the  
"day of 19 in favour of the mortgagee  
"upon which the sum of £ with current interest thereon  
"(or as the case may be) is now owing but otherwise free from  
"incumbrances."

If the mortgagee is not the original mortgagee the reference to the mortgage could be thus:—

"subject to a mortgage dated etc. in favour of . . . (the  
"benefit of which mortgage is now vested in the mortgagee)  
"etc."

The adoption of the statutory form of assent without the recitals so often found in these documents would also be an advantage. Not only would it save time and materials but it

would avoid the possibility of inadvertently lifting the curtain and allowing a purchaser to peep behind it, sometimes with disastrous results. *Duce v. Boots Cash Chemists* is a case in point.

MANAGING CLERK II.

## REVIEW

**The Alteration of Local Government Areas.** By F. A. AMIES, B.A., F.C.I.S., F.R.V.A., of Gray's Inn, Barrister-at-Law. 1946. London: Hadden, Best & Co., Ltd. 15s. net.

This is a very useful book. It contains the text of the Local Government (Boundary Commission) Act, 1945, and parts of the Local Government Act, 1933, and the Interpretation Act, 1889. The Local Government (Boundary Commission) Regulations, 1945, Practice Notes, Series I, and certain official correspondence are reproduced. There is a very full Introduction. The notes to each section of the law are clear and instructive. The Index is good.

## BOOKS RECEIVED

**Kerr on Receivers.** By F. C. WATMOUGH, B.A., of the Middle Temple, Barrister-at-Law. Eleventh Edition. 1946. pp. lii and (with Index) 418. London: Sweet & Maxwell, Ltd. 25s. net.

**The Construction of Deeds and Statutes.** By Sir CHARLES E. ODGERS, M.A., B.C.L., of the Middle Temple, Barrister-at-Law, late Puisne Judge of the High Court of Judicature at Madras. Second Edition. 1946. pp. xxi and (with Index) 328. London: Sweet & Maxwell, Ltd. 22s. 6d. net (paper boards); 25s. net (cloth).

**Chalmers and Hood Phillips on Constitutional Law.** By O. HOOD PHILLIPS, M.A., B.C.L. (Oxon), of Gray's Inn, Barrister-at-Law, Reader in English Law at the University of London. Sixth Edition. 1946. pp. xxxii and (with Index) 710. London: Sweet & Maxwell, Ltd. 30s. net.

**Cockle & Hibbert's Leading Cases in Common Law.** Volume II.—Torts. By H. J. S. JENKINS, of the Inner Temple, Barrister-at-Law. Third Edition. 1946. pp. xii and (with Index) 403. London: Sweet & Maxwell, Ltd. 32s. 6d. net.

**Stone's Justices' Manual for 1946.** Edited by E. J. HAYWARD, C.B.E., Solicitor, Clerk to the Justices for the City of Cardiff. Seventy-eighth Edition. 1946. pp. cccxlv, 2,920 and (Index) 191. London: Butterworth & Co. (Publishers), Ltd. 50s. net (thick); 55s. net (thin).

**Tristram & Coote's Probate Practice.** Edited by C. T. A. WILKINSON, Registrar of the Probate and Divorce Divisions, E. W. LEADER, Solicitor, late of the Principal Probate Registry, and G. M. GREEN, Solicitor, of the Estate Duty Office. Nineteenth Edition. 1946. pp. lxii, 1,255 and (Index) 142. London: Butterworth & Co. (Publishers), Ltd. 75s. net.

## NOTES OF CASES

## COURT OF APPEAL

*In re Welsh Brick Industries, Ltd.*

Lord Greene, M.R., Morton and Tucker, L.J.J. 29th May, 1946

*Companies—Winding up—Writ issued for recovery of debt under R.S.C., Ord. 14—Unconditional leave to defend—Creditor presents winding-up petition—Discretion of judge to make order—Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 168.*

Appeal from Cardiff County Court.

On the 18th February, 1946, the petitioning creditor issued a writ in the King's Bench Division for the purpose of recovering £800 advanced by him to W., Ltd. On the 26th April, 1946, the company was given unconditional leave to defend that action. In the meantime, on 9th April, 1946, the creditor had presented a petition for the winding up of W., Ltd., in the Cardiff County Court. The learned county court judge made a compulsory winding-up order. The company appealed on the ground that the petitioning creditor had no *locus standi* to present a petition, because his alleged debt was the subject of a bona fide dispute, winding-up proceedings not being the appropriate procedure for dealing with disputed debts.

LORD GREENE, M.R., said that the practice in the matter was stated in Buckley on the Companies Act (11th ed., pp. 356, 357), where it was said that "a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company . . ." He could not accept the proposition that merely because unconditional leave to defend was given, that of itself must be taken as establishing that there was a bona fide dispute or that there was some substantial ground of defence. The fact that such an order was made was no doubt a matter to which the winding-up court would in due course pay respect, but he could not regard it in any way precluding a winding-up judge from going into the matter himself on the evidence before him and considering whether or not the dispute was a bona fide dispute, or, putting it another way, whether or not there was some substantial ground for defending the action. An order could be made under R.S.C., Ord. 14, giving unconditional leave to defend on grounds which fell far short of the establishment of a substantial ground of defence to the satisfaction of the Registrar or the Master. In the winding-up court it must be competent for the judge, in spite of the fact that unconditional leave to defend had been granted, to go into the evidence which was in fact before him. Looking at the evidence, he found it difficult to see on what ground the judge could have found contrary to what he did. The appeal failed on that ground. There was ample evidence on which the judge could find that the company was unable to pay its debts. The appeal failed.

MORTON and TUCKER, L.J.J., agreed in dismissing the appeal.

COUNSEL: *Gerald Upjohn, K.C., and R. Gwyn Rees; J. B. London, K.C., and Carey Evans.*

SOLICITORS: *Fortescue, Adhead & Guest, for Richards & Guest, Cardiff; Ince & Co., for Allen Pratt & Geldard, Cardiff.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

*In re Parana Plantations, Ltd.*

Lord Greene, M.R., Morton and Tucker, L.J.J. 31st May, 1946  
*Contract—German contract with English company—Moneys paid to German bank—Repayment to German national should agreement become impossible of performance—Outbreak of war—German national in England—Whether entitled to repayment.*

Appeal from a decision of Vaisey, J.

The appellant company, an English company, had two subsidiary companies incorporated in Brazil, one a railway company, the other a land company. The railway company was anxious to obtain rolling stock from Germany and the land company to sell its land. The German authorities authorised a barter arrangement under which Germans wishing to emigrate to Brazil were allowed to purchase plots from the land company; the German currency thus obtained by the land company was to be put into an account with a German bank to be used by the railway company for the purchase of rolling stock. The appellant company carried out the negotiations for this agreement and the relevant contract was made with it. The contract was one of some complexity. A German national participating in the scheme was called "a participant," he was entitled to choose a plot, and he was granted a provisional land certificate. He paid the purchase price in reichsmarks to the blocked account in a German bank. Clause 8 of the agreement then provided: "In the event of it being impossible by reason of *force majeure* for the railway material ordered to be delivered the marks amount paid in is refunded." In July, 1938, O, who was then living in Germany, became a participant and paid 20,600 reichsmarks to a blocked account in a German bank. On the outbreak

of war the performance of the contract became impossible. O was then in England, and had since resided there. The appellant company went into voluntary liquidation in 1944, and O then put in a proof for £1,943 7s. 11d., being the sterling equivalent of 20,600 reichsmarks on the 2nd September, 1939. He contended that the contract placed on the appellants an obligation to refund and the claim to refund was not limited to Germany. Vaisey, J., accepted that contention. The company appealed.

LORD GREENE, M.R., said that the only contract was to make a payment in Germany and that contract was not broken because the very outbreak of war, which gave rise to the contractual obligation to pay, made it illegal. O could not say that the company not paying in Germany was in breach of its obligations. The proof was rightly rejected by the liquidator. The appeal must be allowed.

MORTON and TUCKER, L.J.J., agreed in allowing the appeal.

COUNSEL: *Sir Cyril Radcliffe, K.C., and T. D. D. Divine; Pascoe Hayward, K.C., and I. J. Lindner.*

SOLICITORS: *Holmes, Son & Pott; Slaughter & May.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## KING'S BENCH DIVISION

*Parker v. London & North Eastern Railway Co.*

Denning, J. 28th February, 1946

*Railways—Fire caused by spark from railway engine—No spark arrester fitted—Duties and liability of railway company.*

Action tried by Denning, J.

In August, 1943, a railway engine belonging to the defendant company emitted a spark which set fire to the plaintiff's crops. The plaintiff accordingly sued the railway company, contending that the damage was due to their negligence. The plaintiff contended that the onus lay on the railway company of proving that they had not been negligent, and that they had in fact been guilty of negligence in not fitting spark arresters to their engines. Evidence was given of the large number of fires previously caused by sparks from the company's engines. His lordship accepted evidence that spark arresters which not only improved the combustion of coal but largely prevented damage from sparks had been used in the United States, and in this country by the Great Western Railway, for many years past.

DENNING, J., said that in his opinion the burden of establishing negligence lay on the plaintiff. The railway company should have kept abreast of modern developments in this country and abroad. By not adopting spark arresters by 1943, they had failed to take reasonable precautions for the prevention of fires and were guilty of negligence. That being so, notwithstanding that the absolute liability of railway companies under the Railway Fires Act, 1905, and the Railway Fires (Amendment) Act, 1923, was £200, the plaintiff was entitled to judgment for £4,630, the full amount of the agreed damages.

COUNSEL: *Beney, K.C., and F. Denmy; Pritchard, K.C., and Gerald Howard.*

SOLICITORS: *Kenneth Brown, Baker, Baker; Miles Beevor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

*Sellwood v. London, Midland & Scottish Railway Co.*

Hallett, J. 13th May, 1946

*Railways—Sparks from engine—Fire—Absence of spark-arresting device—Duty of railway company.*

Action tried by Hallett, J.

The plaintiff's property was damaged by fire caused by a spark emitted by a goods engine while hauling a goods train on the defendants' railway. The engine was not fitted with a spark-arresting device. To have fitted one would have caused loss of steaming efficiency in the engine and other inconvenience at a time when, owing to the war, the defendant company were engaged in transportations of military importance. A modern design of spark arrester had been fitted to 1,200 of the defendants' larger engines, but never to one of the type which caused the fire in question. The arresters fitted to the larger engines were later removed because of their adverse effect on steaming efficiency, which effect was in part due to war conditions and was particularly undesirable in time of war.

HALLETT, J., after referring to *Manchester Corporation v. Farnworth* [1930] A.C. 171; *Provender Millers (Winchester), Ltd. v. Southampton County Council* [1940] Ch. 131; *Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193; *L.B. & S.C. Rly. v. Truman* (1885), 11 App. Cas. 45; *Shelfer v. City of London Electric Lighting Coy.* [1895] 1 Ch. 287; *Fremantle v. L. & N.W. Rly. Coy.* (1861), 10 C.B. (N.S.) 89; *Dimmock v. North Staffordshire Rly. Coy.* (1866), 4 F. & F. 1058; and *Groom v. G.W. Rly. Coy.* (1892), 8 T.L.R. 253, said that the plaintiff, in order to succeed, had to show that the emission of sparks which caused the fire was the result of a failure by the railway company

to take reasonable care with regard to the design, maintenance or management of the engine. He (his lordship) was satisfied that the engine was properly maintained. As for design, it was alleged that the engine should have been fitted with a spark arrester. There were various ways in which the fitting of such an arrester caused inconvenience; in particular, it caused a loss of steaming efficiency; even for the large engines that loss was a serious matter under the urgency of war-time transportation. In considering what was reasonable, the court must look at all the circumstances. The company could not be expected to fit to the smaller type of engine which had caused the fire a spark arrester which had diminished efficiency even in larger engines. As for management, however, the cause against the company was plain: he (his lordship) found that the sparks were due to negligent firing of the engine, and he gave judgment for the plaintiff for the damages claimed.

COUNSEL: *Ronald Hopkins*; *F. H. Lawton*.

SOLICITORS: *J. H. Fellowes*; *R. P. Humphrys*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Sussex and Dorking United Brick Companies v. Jeanes**  
(Inspector of Taxes)

Wrottesley, J. 16th May, 1946

*Revenue—Income tax—Depreciation—Allowance based on cost of premises to trader—Lessee not eligible—Finance Act, 1937*  
(1 *Edw.* 8 & 1 *Geo.* 6, c. 54), s. 15.

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant company obtained a lease for thirty-five years of certain brick works, covenanting to pay to the lessors at the end of the term an amount equal to the amount of depreciation to the property however caused. The company in due course claimed depreciation allowance under s. 15 (3) (b) of the Finance Act, 1937, whereby an amount equal to 1 per cent. of the actual cost to the person carrying on a trade of any building which forms part of the premises concerned may be deducted in computing the profits of that trade. Section 15 (1) refers to deduction in respect of premises owned by the person carrying on the trade. By s. 15 (5) where any person occupies the premises as tenant he shall be treated for the purposes of the section as if he were the owner if, under the covenant to repair contained in the lease, the whole of the burden of any depreciation of the premises falls on him. The company appealed against disallowance of their claim, contending that, as the whole burden of the depreciation fell on them, they were entitled to the deduction in question under s. 15 (5).

WROTTESELEY, J., said that it was to be observed that by s. 15 (3) (b), the permitted deduction was 1 per cent. of the actual cost of the building to the person carrying on the trade. The company fulfilled the statutory qualification of being the persons who carried on the trade. There had, however, never been any cost to them of the premises, for they had neither acquired them by purchase nor themselves erected them. They were accordingly not entitled to the deduction allowed by the section. The appeal must be dismissed.

COUNSEL: *F. Grant, K.C.*, and *Croucher*; *The Solicitor-General* (Sir Frank Soskice, K.C.), *R. P. Hills* and *Michael*.

SOLICITORS: *Walbrook & Hosken*; *Solicitor of Inland Revenue*.  
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**R. v. Minister of Health; ex parte Waterlow & Sons, Ltd**  
Lord Goddard, C.J., Humphreys and Singleton, JJ.  
3rd June, 1946

*Housing—Minister's authorisation of compulsory purchase—Similarity in effect to compulsory purchase order—Certiorari—Whether available—Sports ground—Whether exempt from compulsory purchase—Housing Act, 1936* (26 *Geo.* 5 & 1 *Edw.* 8, c. 51), s. 75, Sched. II, paras. 2, 3—*Housing* (Temporary Accommodation) Act, 1944 (7 & 8 *Geo.* 6, c. 36), ss. 4, 6.  
Application for an order of certiorari.

By an authorisation dated the 31st December, 1945, the Minister of Health, purporting to act under s. 6 of the Housing (Temporary Accommodation) Act, 1944, authorised Walthamstow Corporation "to enter and take possession for the purpose of Part V of the Housing Act, 1936 of" a sports ground owned by the applicant company, and kept by them for the benefit of their employees. The Act of 1944, by s. 9 (2), is to be read as one with the Housing Act, 1936, and it empowered a local authority in present circumstances to apply to the Minister for his authorisation to acquire land compulsorily. No public local inquiry need be held. The Minister must consider representations made to him by the owners of the land, but if he gives an authorisation

the local authority can enter at once, and have power to acquire the land in the same way as under s. 74 of the Act of 1936. This application was made on the ground that the corporation had no power to acquire the land because it formed part of a pleasure ground, the acquisition of a pleasure ground or part of a pleasure ground being forbidden by s. 75 of the Act of 1936.

LORD GODDARD, C.J., said that the Attorney-General's first point was that certiorari did not lie, and that the only provision giving a right of appeal to the court was para. 2 of Sched. II to the Act of 1936. The first question to consider was whether a compulsory purchase order existed in this case, for Sched. II dealt with such orders and the words of s. 75 were "which at the date of the compulsory purchase order forms part of any park, garden or pleasure ground." In his (his lordship's) opinion, the authorisation granted under s. 6 of the Act of 1944 was the equivalent of a compulsory purchase order, having regard to the wording of s. 6 (4) of the Act. As soon as the Minister had given his authorisation the position was to be exactly as though a compulsory purchase order had been made, submitted and confirmed. Therefore the provisions in the Act of 1936 relating to compulsory purchase orders applied to authorisations under the Act of 1944. Then came the question whether in those circumstances certiorari lay. Paragraph 1 of Sched. II to the Act of 1936 could not apply to this case because its machinery was not applicable under the Act of 1944. Under para. 3 of the Schedule a compulsory purchase order only became operative at the expiration of six weeks from the date on which the notice of its confirmation was published. Paragraph 2 laid down a similar time limit of six weeks for an application to the court challenging a compulsory purchase order. It was argued for the company that that procedure could not be followed here because the machinery under the Act of 1944 was different from that under the Act of 1936. That was a good answer to the point. Certiorari was not taken away here because the procedure which Sched. II gave in substitution for it was not applicable under the Act of 1944. The Attorney-General had wished to keep open an objection, which he had not argued, that certiorari would not lie because the authorisation was a mere administrative order. The merits of the application depended on the true construction of s. 75 of the Act of 1936, which in the Act of 1944 was described as the principal Act. The section provided: "Nothing in this Act shall authorise the compulsory acquisition . . . of any land which . . . at the date of the compulsory purchase order forms part of any park, garden or pleasure ground, or is otherwise required for the amenity or convenience of any house." The Attorney-General admitted that the land might be described as a pleasure ground because it was a sports ground, but contended that the land must form part of land which was appurtenant to a house, and that the section was intended to preserve the amenities of a person's house. In his (his lordship's) opinion, the Attorney-General was right on this point. The section would be clearer if expressed thus, for the whole question turned on the word "otherwise": "forms part of a park, garden or pleasure ground or for any other reason is required for the convenience or amenity of a house." That made it clear that these words "required for the convenience or amenity of a house" applied to the words "park, garden or pleasure ground." Furthermore, the words "pleasure ground" should be construed according to the *ejusdem generis* rule. The pleasure ground was something in the nature of a park or garden and referable to the amenities or convenience of a house. The application failed. HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *Paull, K.C.*, and *Sophian*; *The Attorney-General* (Sir Hartley Shawcross, K.C.) and *H. L. Parker*; *Simes, K.C.*, and *Scholefield*.

SOLICITORS: *Coward, Chance & Co.*; *Solicitor to Ministry of Health*; *Town Clerk, Walthamstow*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## RECENT LEGISLATION

### STATUTORY RULES AND ORDERS, 1946

- No. 1417. **Control of Engagement** (No. 3) Order. (Coalmining Industry). August 20.
- No. 1432. **Trading with the Enemy** (Authorisation) (Hungary) Order. August 23.
- No. 1434. **Trading with the Enemy** (Custodian) (Amendment) (Hungary) Order. August 23.
- No. 1433. **Trading with the Enemy** (Transfer of Negotiable Instruments, etc.) (Hungary) Order. August 23.

## COMMAND PAPERS (SESSION 1945-46)

No. 6890. **United States.** Convention for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on the Estates of Deceased Persons, Washington, April 16, 1945.

## LAND REGISTRY

**Practice Leaflet for Solicitors. No. 1.** Mergers affecting Registered Land. July, 1946.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

## NOTES AND NEWS

## Honours and Appointments

The Lord Chancellor has appointed Mr. HAROLD JAMES CONDER WHITMEE to succeed Judge Finnemore on Circuit 25 (Walsall, etc.) and has appointed Mr. CAREY EVANS to be Joint Judge on Circuit 38 (Watford, etc.), and has also ordered the following transfers: Judge Dale to Circuit 48 (Lambeth, etc.) and Judge Finnemore to Circuit 21 (Birmingham).

The Order transferring Judge Dale and Judge Finnemore and the appointments of Mr. Whitmee and Mr. Carey Evans are all dated to have effect on 4th September, 1946.

Until further notice the following addresses apply:—

Judge Dale, Baker's Close, Long Crendon, Aylesbury, Bucks.

Judge Finnemore, 2, Charles Road, Handsworth, Birmingham.

Judge Whitmee, 12, King's Bench Walk, Temple, E.C.4.

Judge Carey Evans, 3, King's Bench Walk, Temple, E.C.4.

The Lord Chancellor has appointed Mr. JAMES LOUIS CHRISTIAN DILCOCK to be the Registrar of the West Bromwich, Walsall, Lichfield and Tamworth County Courts and District Registrar in the District Registry of the High Court of Justice in West Bromwich and Walsall as from the 26th August, 1946.

## Professional Announcement

SARPE, PRITCHARD & Co., of 12, New Court, Carey Street, W.C.2, and Palace Chambers, Bridge Street, Westminster, S.W.1, announce that Reginald Frank Parker retired from the firm on the 31st August, 1946, and that they have taken into partnership, as from 1st September, 1946, his nephew, James Andrew Townsend, M.B.E., B.A. (Cantab.), and Clive Hardinge Pritchard, B.A. (Oxon), the younger son of the senior partner, Sir Harry G. Pritchard, D.L. The style and addresses of the firm remain unchanged.

## Notes

The Legal & General Assurance Society, Ltd., announce the opening of a new branch at Jameson House, Upper George Street, Luton, on the 1st September, 1946. Mr. W. N. White, who has been Resident Secretary at the Luton branch of the allied Society, the Gresham Fire & Accident Insurance Society, Ltd., has been appointed Branch Manager for both Societies.

The following London rent tribunals are now in operation:— The first covers Barnes, Richmond, Kingston, Malden and Coombe, Merton and Morden, Surbiton, Epsom and Ewell and Sutton and Cheam. Its offices will be 59, Eden Street, Kingston-on-Thames. Members are: Mr. W. A. Chance (Chairman); Mr. C. J. C. Latham; Mrs. D. E. Woodger and Mrs. H. M. Lane (reserve members). The clerk is Mr. E. W. Orchard.

The second covers Twickenham, Heston and Isleworth, Brentford, Chiswick, Feltham, Sunbury and Staines. Its offices will be at 2, York Villas, Church Street, Twickenham. Members are: Mr. E. G. Stray (Chairman); Mr. F. W. Hall (reserve Chairman); Mrs. H. M. Butlin; Mr. W. G. Kerry (reserve member). The clerk is Mr. F. G. Sheppard.

The third covers Acton, Ealing, Southall, Hayes and Harlington, Yiewsley and West Drayton, Uxbridge and Ruislip-Northwood. Its offices will be at 2A, Bond Street, Ealing, W.5. Members are: Miss V. M. J. Stephenson (Chairman); Mr. W. A. Jones (reserve Chairman); Mr. F. J. Taylor; Mr. C. St. John de Vere Shortt (reserve member). The clerk is Captain A. Floyd.

A rent tribunal covering Manchester, Altrincham, Sale, Bowden and Hale commenced operations on 2nd September. Its offices are at Chorlton-on-Medlock Town Hall, All Saints, Manchester. Members are: Judge Leigh (Chairman); Mr. W. J. Munro (reserve Chairman); Mrs. O. M. Asbury; Miss M. Gates and Mr. E. E. Whittaker (reserve members). The clerk is Mr. L. Cockayne.

## STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Sept. 2 1946	Flat Interest Yield	† Approximate Yield with redemption
<b>British Government Securities</b>				
Consols 4% 1957 or after .. ..	FA	113½	£ s. d. 3 10 4	£ s. d. 2 8 8
Consols 2½% .. ..	JAJO	97xd	2 11 7	—
War Loan 3% 1955-59 .. ..	AO	106½	2 16 2	2 2 3
War Loan 3½% 1952 or after ..	JD	107½	3 5 3	2 3 10
Funding 4% Loan 1960-90 ..	MN	118½	3 7 6	2 8 5
Funding 3% Loan 1959-69 ..	AO	106½	2 16 5	2 8 8
Funding 2½% Loan 1952-57 ..	JD	103½	2 13 0	2 1 7
Funding 2½% Loan 1956-61 ..	AO	102½	2 8 9	2 4 3
Victory 4% Loan Av. life 18 years ..	MS	118½	3 7 8	2 14 1
Conversion 3½% Loan 1961 or after ..	AO	111½	3 2 11	2 11 9
National Defence Loan 3% 1954-58 ..	JJ	105½	2 16 10	2 2 9
National War Bonds 2½% 1952-54 ..	MS	102½	2 8 9	2 1 9
Savings Bonds 3% 1955-65 ..	FA	105	2 17 2	2 6 10
Savings Bonds 3% 1960-70 ..	MS	105½	2 16 8	2 10 2
Local Loans 3% Stock .. ..	JAJO	100½xd	2 19 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after .. ..	JJ	101	2 19 5	—
Guaranteed 2½% Stock (Irish Land Act 1903) .. ..	JJ	101	2 14 5	—
Redemption 3% 1986-96 .. ..	AO	111	2 14 1	2 11 1
Sudan 4½% 1939-73 Av. life 16 years ..	FA	118½	3 15 11	3 0 7
Sudan 4% 1974 Red. in part after 1950 .. ..	MN	115	3 9 7	—
Tanganyika 4% Guaranteed 1951-71 ..	FA	107	3 14 9	2 6 2
Lon. Elec. T.F. Corp. 2½% 1950-55 ..	FA	100	2 10 0	2 10 0
<b>Colonial Securities</b>				
*Australia (Commonw'h) 4% 1955-70 ..	JJ	109	3 13 5	2 17 1
Australia (Commonw'h) 3½% 1964-74 ..	JJ	107	3 0 9	2 15 0
*Australia (Commonw'h) 3% 1955-58 ..	AO	103	2 18 3	2 12 6
†Nigeria 4% 1963 .. ..	AO	118	3 7 10	2 13 4
*Queensland 3½% 1950-70 .. ..	JJ	103	3 8 0	2 11 7
Southern Rhodesia 3½% 1961-66 ..	JJ	111	3 3 1	2 12 1
Trinidad 3% 1965-70 .. ..	AO	104xd	2 17 8	2 14 6
<b>Corporation Stocks</b>				
*Birmingham 3% 1947 or after .. ..	JJ	101	2 19 5	—
*Croydon 3% 1940-60 .. ..	AO	101xd	2 19 5	—
*Leeds 3½% 1958-62 .. ..	JJ	106	3 1 3	2 12 3
*Liverpool 3% 1954-64 .. ..	MN	104	2 17 8	2 8 1
Liverpool 3½% Red'mable by agreement with holders or by purchase ..	JAJO	113xd	3 1 11	—
London County 3% Con. Stock after 1920 at option of Corporation ..	MSJD	100½	2 19 8	—
*London County 3½% 1954-59 .. ..	FA	107	3 5 5	2 10 5
*Manchester 3% 1941 or after .. ..	FA	101	2 19 5	—
*Manchester 3% 1958-63 .. ..	AO	105	2 17 2	2 10 3
Met. Water Board 3% "A" 1963-2003 .. ..	AO	103xd	2 18 3	2 15 7
*Do. do. 3% "B" 1934-2003 .. ..	MS	102	2 18 10	—
*Do. do. 3% "E" 1953-73 .. ..	JJ	103½	2 18 0	2 8 1
Middlesex C.C. 3% 1961-66 .. ..	MS	105	2 17 2	2 11 5
*Newcastle 3% Consolidated 1957 ..	MS	104½	2 17 5	2 10 6
Nottingham 3% Irredeemable .. ..	MN	105½	2 16 10	—
Sheffield Corporation 3½% 1968 ..	JJ	114	3 1 5	2 13 1
<b>Railway Debenture and Preference Stocks</b>				
Gt. Western Rly. 4% Debenture .. ..	JJ	114½	3 9 10	—
Gt. Western Rly. 4½% Debenture .. ..	JJ	122	3 13 9	—
Gt. Western Rly. 5% Debenture .. ..	JJ	133½	3 14 11	—
Gt. Western Rly. 5% Rent Charge .. ..	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. G'rteed. ..	MA	121½	4 2 4	—
Gt. Western Rly. 5% Preference .. ..	MA	112½	4 8 11	—

\* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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